THE LOGIC OF SOCIAL INSURANCE

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Hitherto the title "industrial insurance" in this country has been monopolized by private companies, and meant chiefly provision for funeral expenses at high cost. It is time to extend the significance of the words, or to adopt some such description as "social insurance" to cover the methods of guaranteeing income to wage earners and their families in case of sickness, accident, invalidism, feebleness of old age, death of the breadwinner and unemployment.

The people are beginning to take an interest in the subject. A few years ago all suggestions were hushed by the sneering epithets, "socialism," "sentimentalism," "paternalism," and a hint that one was corrupted by German "absolutism." Of course, there never was any real weight in such empty and provincial phrases, and they merely indicated the fact that the American mind was empty of knowledge of a world movement. They revealed an indifference to human suffering which did no credit to our civilization, and a contempt for social science, which was not honorable to our universities, editors and lawyers. Very hopeful are the signs of interest. Magazine articles on industrial accidents sell the numbers; legislative committees are busy framing bills; the Russell Sage Foundation and the Carnegie Institution are collecting information; trade unions have retained legal talent to help them formulate laws which will have a living chance with conservative courts bound under constitutions written by men of mind alien to our age and for radically different economic conditions and ethical ideals. European nations have solved the actuarial and economic problems, while America, proud of its inventiveness and initiative, lags in the rear and rails at the "effete monarchies" of the Old World, and foretells all sorts of evils like those senile persons who praise the times that are dead.

Perhaps the newspapers, even though hostile, have helped to awaken attention by grudging references to the European laws, while a corps of young writers of talent and persons with experience in charity work have stirred the sluggish conscience of the

nation by their stories of misery caused by our human neglect, and have reminded men of the disclosures of the German workingmen's insurance plans at the St. Louis Exposition.

One cause of the awakening is a discovery of the enormous cost of litigation which has become a burden upon the resources of the nation and a disgrace to the legal profession, as well as a source of corruption. A recent article in the Chicago "Tribune" on "The Cost of Legal Circumlocution," furnishes an illustration:

> All the civil litigation of England and Wales, population about thirty-two millions, is taken care of by thirty-four judges in the supreme court of judicature and fifty-eight county judges, or ninety-two judges in all.
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> The population of Illinois was, by the census of 1900, approximately 4,800,000. Its courts employ seventy-eight circuit judges and 101 county judges exclusive of Cook County. Cook County has twenty-five circuit and superior court judges, a county judge, a probate judge, and a municipal court of very general jurisdiction employing twenty-eight judges. There is a supreme court of seven judges. In all these judges number 216. Besides, we have justices of the peace and the federal judges.
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> The "Tribune" does not offer this rough comparison as conclusive. But it suggests that after making all due allowances the discrepancy revealed is shocking. Omitting the work of our county judges and taking into account only that of our circuit, superior and supreme courts, we have an establishment of eighty-five judges taking care of the civil and criminal cases of a population of less than five millions, while in England and Wales ninety-two judges dispose of all the litigation of more than six times our population. The vast property and business conditions of England must also be thrown into the scale against us.
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> Unless our judges and our lawyers are incompetent or worse there is something wrong in our administration of the courts. The first hypothesis is, of course, not to be considered. The alternative should be faced by the profession and by the public and reform achieved. The waste and burden of our over-technical procedure must cease. It has endured too long.

Studies of the causes of wasteful expenditures in courts reveal the slow and serpentine course of personal damage suits which fill the dockets and blockade the roads of justice. Important commercial business must wait while, during long years some mutilated workman, led by an ambulance-chasing lawyer, who is fed on hopes of immense contingent fees, fights his employer or a soulless casualty insurance company through court after court, in the end to accept the pittance which the attorneys are willing to leave him from the award.

The ideal of justice is a prompt, certain and unbought indem-

nity; the actual fact is that under our employers' liability laws the indemnity for injury in occupation is subject to all the uncertainties of gambling, it comes, if ever, after long and painful waiting, and it is robbed of its value by the necessary costs of collection through the courts. There is no greater source of hatred for law and judicial process than this travesty and mockery of justice. The abuses of injunctions in case of strikes and boycotts are comparatively rare and easily remedied; the wrongs legally perpetrated in damage suits are a matter of universal and daily experience. As soon as a workman is injured and claims his indemnity in courts his employer may put him on a black list and persecute him to death; and the very nature of the law produces this artificial and monstrous antagonism. Lawlessness and class hatred are the legitimate progeny of a procedure which has been rejected by every other great and civilized people.

Curious and discouraging is the consequence of living for generations under such an unfit law; it has shaped our modes of reasoning until we cannot think rationally on the actual demand of the situation. We follow precedents of the past for a guide in a new and different economic world, and every step takes us further from our goal. Not only lawyers and judges, but aggressive business men and shrewd trade unionists think in terms set by antiquated regulations. Trade unions are spending their energy on making the employers' liability law still more drastic and until recently, they have not faced the fact that progress in this direction is impossible. What they need is insurance of income in all cases of accident, whether from negligence of employer or from risk of the trade. What they want and ask is the chance to punish their employers in case of negligence only, and they are seeking to interpret "negligence" in a sense which it never had before, which is unjust now, and which will provoke still more conflict in the courts.

Meantime, more by a reflex movement of discomfort than from scientific guidance, employers and employees are performing all sorts of experiments with insurance. Blind and faulty as those gropings are, they must be made the starting point for a scientific and complete system in the future, as acorns produce oaks.

The principle of association for mutual protection in the emergencies of existence manifests itself in the clubs and local benefit societies which are formed everywhere in the country. The negroes

of the South have been led by the instinct of aggregation and the example of their white neighbors to pool their dues against the time of the funeral. Sometimes the undertaker is also secretary-treasurer of the pool, with results very similar to those known in the case of burial insurance benefits.

The statistics of funds collected by these friendly groups on the basis of common occupation, race or religious ties, or mere neighborhood, will never be gathered; but even partial surveys show vast sums and reveal heroic sacrifice and deeds of friendly service. The German imperial legislators have been wise enough to retain these features of local and personal moral bonds in their sickness insurance laws. In connection with illness something more is needed than mere money benefits; a human touch of sympathy must be added by fraternal visitors; and intimate acquaintance diminishes the temptation to malingering almost as thoroughly as medical examinations.

The fraternal societies, of national scope and with local lodges, all federated in the common interest, have, with slow and irregular march, educated millions of people in the elementary principles of social insurance. It is true these societies include many representatives of the commercial and professional classes, but they are also popular with many groups of workingmen. They have demonstrated the possibilities of economy of administration where the ties of personal association are strong through neighborly feeling, mystic symbols and religious faith. The Mutualists of France have shown that not only sickness insurance and death benefits but also old age pensions can be provided by this method—with proper governmental supervision and aid.

Some of the trade unions have added insurance features of various kinds, and when members have good wages these have succeeded fairly well with sickness and burial benefit. The trade unions alone have achieved even a moderate success with unemployment benefits. They have failed to insure the workmen who are on low and uncertain income. When a system of compulsory accident insurance has been organized the trade unions will be free to provide sickness and invalid insurance and additional income beyond the minimum which can be secured by law; but they can never furnish adequate accident insurance, and society has no right to require them to carry a risk which is part of the real cost of production and should be borne wholly as part of the expenditures of production.

One principle has been taught to millions of persons by all these schemes of insurance—the principle of insurance as opposed to savings. The obsolescent doctrines of individualism and laissez-faire idolized the savings bank and the multitudes actually believed that by deposits of an average of one hundred dollars a year at 3 per cent they could all become capitalist managers and gain a share in the profit funds. This illusion was cultivated for a long time by advocates of many ill-defined "profit-sharing" schemes. Of course, there was a large measure of truth in both these ideas, and much will still be made of them in the future. But hope of "rising" into the diminishing capitalist-manager class has been definitely abandoned by workingmen and people on salaries. Attention is turned to the value of association and insurance. The minute a man joins an insurance society he gains a claim on a fund which he could not "save" in twenty years. Furthermore, men are discovering that co-operation with others opens a finer way of life than depositing premiums to an individual account.

From the point of view of social insurance the tendency to concentrate manufactures, commerce and transportation in permanent corporations is an advantage; partly because the responsible managers of large enterprises must be far-seeing men, and partly because solid corporations can safely venture on schemes which require a long view and the accumulation of funds. It is precisely with the railway companies and the other huge corporations that we find the most rapid development of workingmen's benefit and pension plans. It seems probable that these bodies will entrench themselves in their financial position by these means, because they will draw away from the less important managers their best workmen and hold them in their service with the prospect of serene and independent old age. These plans are developing so rapidly that statistics are soon obsolete, and there is scarcely a good manufacturing or transportation company which is not employing legal and actuarial talent to recommend methods and legislation. To this course they are driven all the more by the tendency of legislatures to lay upon corporations, creations of the state, burdens of liability which they do not think of imposing on private employers. The consequence is that the directors of large enterprises are looking about for a method which will at once conciliate employees and avoid the waste of litigation in damage suits. As progress comes by common imitation of examples

set by princes and men in high place, we may reasonably look for a movement of smaller employers to secure the advantages of assembled capital through national insurance associations which will either furnish workmen's collective policies or arrange for better terms with casualty companies.

No voluntary system of social insurance can be economically administered, save upon a foundation of compulsory insurance. The reason is obvious and all the schemes mentioned illustrate the law. So long as accident insurance continues to be optional, many employers and employees will neglect organization and they will hamper or even defeat those who are willing to organize.

Part of the difficulty in the United States is created by the existing law. Employers feel that they cannot afford to support accident insurance at their own cost so long as they are liable to pay heavy damages to injured workmen or fight them in the courts; and the law keeps them always in fighting mood. So long as part of the employers refuse to carry these extra premiums their competitors are economically compelled to follow their example.

A compulsory insurance law would at one stroke of the pen remove the burden created by the present liability for negligence and the appalling wastes in casualty company fees and litigation; and at the same time the amount now wasted or misdirected would be available for an accident and sickness insurance fund of vast magnitude. At present an enormous sum is spent for soliciting business and settling claims by agents of casualty companies. This is all waste, because under compulsory insurance employers would seek the means of meeting their responsibilities and their protection could be "sold over the counter." The managers of industries could then choose between the bids of casualty companies for workmen's collective policies, or organize their own mutual insurance associations. The premiums would fall to a legitimate rate and stockholders in casualty companies would no longer draw dividends from extortion, strife and blood money.

That which is economically necessary and otherwise socially imperative will ultimately be found constitutional. In all our history there has been no exception to this rule; although at every step into a brighter world judges have solemnly denied the possibility and great lawyers have turned back to their case books with a smile of pity for the philanthropists or bitter sarcasm for the agitators who

ruffled the calm sea of their complacent confidence in "natural law," Coke, Blackstone and Company.

Within the past year the federal government itself has broken up the "crust of custom" by enacting a law which provides compensation for certain classes of its own employees injured in the service; and the pitifully inadequate compensation will be increased and extended. It is a splendid and persuasive example of justice which the general government has set before the several states and all employers of labor. The document is a light tower showing the future highway for all those who control the services of men who must live day by day on daily income.

The assertion, based on nothing, that compulsory social insurance is "not American" is contrary to the most obvious facts of our history. We are a law-abiding people and love to make laws, and every statute and court ruling is compulsory. We are so used to compulsion in the common interest that we forget it, as we are unconscious of the atmosphere. It is the vital element in which we enjoy freedom, security, order and opportunity. By compulsory laws we build and maintain roads and bridges, against the mean protests of the minority who would be content to stick in the mud. By compulsory laws we secure parks and pleasure grounds and secure the revenue by diverting money from the liquor traffic. Within the memory of the writer in the Middle West a large if not respectable minority railed at the public school laws as robbery, and insisted that any man had the right to bring up his offspring in brutish ignorance if he wished to do so.

Compulsory taxation to relieve the poor, the insane, the idiotic, the demented, the indigent old people is in the poor law of Great Britain, and the nations descended from it; while republican France has recently adopted the principle and Italy is moving in the same direction. This means that the conscience of a modern nation will not permit a citizen, however inefficient or unworthy, to perish without an offer of at least a minimum supply of the necessities of life.

We shall be logical. We shall discover that it is morally infamous to offer temporary asylum and a secure old age to wornout criminals, prostitutes, ignorant ne'er-do-wells, and degenerates, and deny shelter to honest workmen, except on terms revolting and debasing.

The popular campaign against tuberculosis has revealed to the common mind the meaning of the "police power" of the state, and

the significance of public health administration. No man can be sick unto himself, especially in a crowded factory or tenement house. Those who are too ignorant, poor or negligent to keep well are taken in hand by the commissioner of health. Those who suffer from infectious diseases are isolated in special hospitals or warning bulletins are posted at the front door. It is notorious that people on low incomes go to physicians and dispensaries only in the last resort, from fear of expenses their income cannot meet. Society is discovering that neglected disease or wounds involve public loss and danger. How can we secure prompt and economic application to the medical profession without pauper relief? The answer comes from Germany: by compulsory and universal sickness insurance. There is no other answer.

This is part of our reply to those who declaim against workingmen's insurance as "class legislation." It is not class legislation; it is "social insurance," because all members of society reap its advantages, just as rich men who send their children to private schools derive benefits from the public schools which educate the poorer neighbor. If an insured workman is injured he places himself instantly under expert medical advice, and is more surely and speedily restored to industrial efficiency, and so becomes again a producer of social wealth.

Some of the individualists oppose compulsory insurance because it will "pauperize" wage earners. But neglected sickness is the broad and easy descent to pauperism, and it is by this route most paupers travel to their doom. Compulsory insurance is the best public health measure yet organized.

Has anyone investigated the cost and moral degradation caused by the non-payment of medical service? It is notorious that physicians annually contribute millions of dollars to patients who will not or cannot pay; but this is a compulsory tax on physicians, not always a cheerful philanthropy. Physicians cannot refuse the call of a wounded or sick citizen and cannot require advanced payments, as landlords and grocers can. Public opinion and the ethics of their profession require them to rise in the night and go through storms to help those who suffer, and this without hope of payment.

This is unscientific and barbarous. Most of it is wholly unnecessary. Physicians should have a social guarantee of payment, and honest men should not be obliged to pay for the dead beats. Under a

compulsory insurance law a fund for paying physicians and supporting hospitals would be provided in advance and the cost would be equitably distributed. Several methods of providing the funds of social insurance are now under discussion and all of them have a chance of being put to the test of experiment, the final arbiter. We have already paid our compliments to the existing liability law based on the principle of tort, and we have found it condemned by every modern nation except our own, and even here admitted to be full of cruelty and waste.

Massachusetts has passed a law (May, 1908) permitting employers to escape from the existing liability on condition that they adequately insure their employees—the principle embodied in the bill offered for educational purposes in 1907 by the Illinois Industrial Insurance Commission and opposed by the trade unions. Up to the time of writing this article, not a single employer in Massachusetts had thought it worth while to avail himself of this permissive law, and there is no reason in the nature of the case for hoping any general acceptance of the idea.

The delegates to the International Congress on Social Insurance in 1908 were unanimously agreed that a minimum insurance can never in any country be secured to workmen without legal compulsion. This conclusion is the result of more than a century of trial of all forms of voluntary insurance. Two schemes of compulsory law are now debated in this country, the British compensation law, and compulsory insurance. The compensation method is urged for the United States because it is English. But the British act is itself a pioneer experiment; and, heretofore, as in the case of the poor laws and employers' liability laws, we have imitated England after that nation had abandoned an untenable position. The compensation law has difficulties which do not inhere in insurance plans. Thus, if all employers are made liable to pay compensation in any case of injury, the payment would be ruinous to farmers and small manufacturers. It is reported that in England this is so true that the compensation act is a dead letter among the petty manufacturers and farmers.

But if the employees are required to pay a periodical premium of a small percentage of the wage rate, this would be made a part of the ordinary expense of business, and could be met by any householder, or any employer of workmen in shop or field. Our people are

already familar with the insurance principle, they have had the patient and genial instruction of life insurance agents, the most skilful and effective teachers of a great social principle whose services are not always treated with the reverence and gratitude they deserve in view of the results. With the principle of compensation we have no acquaintance unless the obnoxious law of liability for negligence may be so regarded, and that is now so associated with fraud, injustice and waste that it repels.

Compensation laws are an indirect method of compelling employees to insure, when the direct way would be more simple, open, fair and economical. Compensation laws leave the thriftless and irresponsible employers uninsured to compete with employers who do insure, to the disadvantage of the more competent, at the same time leaving their own employees without protection. Under a straight and direct insurance law all employers are on a level and all employees are secure of protection.

Furthermore, under a compulsory compensation law, if it stand alone, the state leaves the employers, especially the small employers, at the mercy of casualty companies without an alternative. It does not seem to the writer fair or safe to compel many thousands of employers to carry a liability to pay heavy indemnities in case of accident or other injury without ample and well organized methods of distributing and providing for the risk by some insurance method. The state itself need not go into the insurance business. It should leave a perfectly free field for casualty companies. But the state should provide for the organization of mutual insurance associations of employers and for a certain fund of deposit which would relieve the individual employer from enormous liabilities, protect the employees beyond a doubt, and provide wholesome competition with private insurance companies conducting business for profit. Advocates of the British compensation law are under moral obligations to remember its limitations. It bears the historic marks of its recent birth from the principal of tort on which the employers' liability law is based; it provides indemnity for injuries from accident and disease only so far as these arise directly out of the employment. But many injuries to health and soundness of body arise out of conditions quite apart from the occupation and place of employment, and for these also workmen need such protection as they can find only under a compulsory insurance system.

The fear is often expressed that if workmen are insured against accidents malingering will be introduced; men will claim benefits on slight pretexts in order to enjoy a vacation. The apparent increase of slight injuries in Germany is cited in proof. The argument has little weight. Men instinctively avoid pain and mutilation; benefits never equal wages; medical certificates can reduce the evil; and, real as the danger is, it is not to be weighed against the well-known miseries of the present situation. Besides, malingering is already a familar fact in this country; the trade unions and fraternal societies have plans for overcoming it. Under our employers' liability laws the workmen very frequently threaten damage suits without legal ground in order to extort payments for injuries not due to employers' negligence. If a careful investigation were made and statistics secured it would show that Germany has no monopoly of malingering. The uncertainty of risk under our law is not merely the occasion of enormous costs for casualty insurance premiums, but, since the limit of practicable insurance is $5,000, and damages of $20,000 to $30,000 are not unknown, the entire risk is not covered by insurance policies. This compels certain employers to pay higher interest for capital required in their business to cover the extra risk, and this is in addition to the loss occasioned by attendance on lawsuits and payments to workmen outside the award.

Doctor Zacher, in a review of the discussions of the International Workingmen's Congress at Rome, in October, 1908, has selected the chief points on which after years of heated discussion all parties seemed to be united. The delegates to this congress from England and France have stood for the principle of freedom and for voluntary organizations. Especially in France the "Mutualists" have long contested the tendency to break up their fraternal organizations and give to the state a monopoly in this sphere. Naturally, the casualty companies have been unwilling to be driven out of the field of accident and health insurance by the compulsory laws of the state. At Rome all these parties united upon the principle that compulsory insurance is absolutely necessary to secure a *minimum* income for working men in case of accident, sickness and invalidism.

Luzzatti, formerly Italian Minister of Finance, confessed himself a convert to the principle of compulsion because he had found that the most earnest efforts of the Italians to secure the great multitude of workers from pauperism on the voluntary principle had

failed. Even with the help of a state subsidy the voluntary associations had been able to insure only 200,000 persons, and most of those connected with the state employments, out of 12,000,000 persons who under a compulsory law would have been insured. Therefore, he was of the conviction that without legislative complusion the purpose of insurance cannot be reached. As compulsory school education was a necessity for the intellectual education of the masses, so compulsory insurance was necessary for their economic education. The fear that compulsory insurance would hinder the development of the free activities of associations had been allayed by the astonishing successes of Germany. And in France, Mabilleau, the leader of the French Mutualists, had reached the conclusion that without legal compulsion the societies of mutual benefit could not be successful in the field of sickness and invalid insurance. Luzzatti made a suggestion which seemed to be accepted by all, that compulsory insurance offers only the indispensable minimum income; while in order to advance to the maximum voluntary insurance must be brought to bear. Between these two poles the free initiative of the individual and the autonomy of voluntary organizations had a wide field for action.

The congress at Rome discussed also the important matter of education and training of expert officers for insurance organizations. This is a matter which must receive attention in the universities of the United States. We have naturally given more attention to life and fire insurance because thought on these matters was better systematized and because material for study was near at hand. But already our great corporations have begun to introduce the voluntary associations of insurance and legislatures are asking for information, and very soon there will be a considerable demand for persons thoroughly trained in the scientific aspects of workingmen's insurance in all its branches. In this connection too great emphasis cannot be laid upon the importance of teaching the medical students their duties in relation to the different schemes of insurance. The medical profession will be called upon more and more to administer the various schemes of accident and invalid insurance, and there are many technical questions of great interest with which they ought to be familiar in addition to their purely professional duties. Courses of instruction in social insurance should, therefore, speedily be added to the curriculum of our medical students. The field of industrial

diseases alone demands much larger attention than it has hitherto received from the medical profession in this country, and only the physicians have the knowledge which will enable them to act as inspectors for insurance agencies. The staff of factory inspectors should include men and women of suitable medical training.

The international congress has given considerable discussion to the insurance of mothers, and it is apparent that in our industrial cities provision must be made for those women who have the double care of infant life and of earning means to support the family. It is not too much to say that degeneration in large groups of modern city dwellers is one of the serious problems of our time. Unemployment insurance will not be touched upon here. Hitherto the United States have been very scantily represented in this international movement, but measures were taken at the last congress for organizing an American committee.

Compulsory compensation or insurance is an inevitable and certain result of measures already taken by leading employers. The greatest managers have already entered seriously upon a policy of insurance in some form, though ever so inadequate and crude; and every manager who assumes financial burdens in this direction finds his pecuniary interest threatened by those less intelligent, progressive and humane. What must be the effect? The only means of equalizing the burden is by legislation compelling all employers to bear the same load, and preventing the meanest and most narrow-minded from deriving an advantage over the best employees. Therefore, every voluntary scheme which is introduced brings one more powerful ally to the cause of compulsory insurance.